

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4 JOHN FRANCIS ARPINO,

3:17-cv-00527-MMD-VPC

5 Plaintiff,

6 v.

7 CHIEF JUSTICE MICHAEL A. CHERRY,

ORDER

8 *et al.*,

9 Defendants.
10

11 **I. DISCUSSION**

12 John Francis Arpino (“plaintiff”) is a prisoner proceeding *pro se*. Plaintiff has submitted a
13 civil rights complaint pursuant to 42 U.S.C. § 1983, and an application to proceed *in forma*
14 *pauperis*. (ECF Nos. 1, 1-1.) The court denies plaintiff’s application to proceed *in forma*
15 *pauperis* and defers its screening of plaintiff’s complaint until he has prepaid the filing fee.

16 Pursuant to 28 U.S.C. § 1915(g), “if [a] prisoner has, on 3 or more prior occasions, while
17 incarcerated or detained in any facility, brought an action or appeal in a court of the United States
18 that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon
19 which relief may be granted,” he may not proceed *in forma pauperis* and, instead, must pay the
20 full \$400.00 filing fee in advance unless he is “under imminent danger of serious physical injury.”
21 28 U.S.C. § 1915(g).

22 Plaintiff’s prior litigation history reveals that he has well over three “strikes.” *Andrews v.*
23 *King*, 398 F.3d at 1116 n.1 (section 1915(g) “is commonly known as the ‘three strikes’ provision
24 ... A prisoner with three strikes or more cannot proceed *IFP*”). On at least four occasions, this
25 court has dismissed civil actions commenced by plaintiff while in detention for failure to state a
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1 claim upon which any relief may be granted.¹ In addition, the court is aware of three appeals
2 plaintiff has filed at the United States Court of Appeals for the Ninth Circuit that were ultimately
3 dismissed as frivolous.²

4 Plaintiff is under no imminent danger of serious physical injury to warrant his excusal
5 from paying the filing fee. Plaintiff's complaint seeks to criminally prosecute a number of
6 justices, judges and district attorneys in Nevada for, inter alia, conspiracy, obstruction of justice,
7 kidnapping, and unlawful imprisonment. (*See generally* ECF No. 1-1). Despite plaintiff's
8 sweeping accusations, the only harm he alleges is that these public officials have discharged their
9 public duties without "post[ing] a valid official surety bond" to "validate their official public
10 offices." (*Id.* at 6.) Even assuming plaintiff states a cognizable claim, these allegations fail to
11 show that plaintiff is in imminent danger of serious physical injury. *See Andrews v. Cervantes*,
12 493 F.3d 1047, 1055 (9th Cir. 2007) (holding that the exception to section 1915(g) applies if the
13 complaint makes a plausible allegation that the prisoner faced imminent danger of serious
14 physical injury at the time of filing). As such, plaintiff must pre-pay the \$400.00 filing fee in full.
15 Plaintiff has long exploited the privilege of proceeding *in forma pauperis*, so the court will not
16 expend additional resources to screen plaintiff's complaint until his payment is received.
17 *Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984) (court permission to proceed *in forma*
18 *pauperis* is itself a matter of privilege and not right.")

19 II. CONCLUSION

20 For the foregoing reasons, plaintiff's application to proceed *in forma pauperis* (ECF No.
21 1) is denied pursuant to 28 U.S.C. 1915(g). This action will be dismissed without prejudice
22 unless plaintiff pays the \$400.00 filing fee in full within thirty (30) days of entry of this order. It
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24 ¹ *See, e.g., Arpino v. Sandoval*, 3:14-cv-00409-MMD-WGC (dismissed for failure to state a claim); *Arpino v.*
25 *Sandoval*, 3:14-cv-00481-MMD-WGC (same); *Arpino v. Sandoval*, 3:14-cv-00522-RCJ-VPC (same); *Arpino v.*
26 *Sandoval*, 3:14-cv-553-MMD-WGC (same). The court takes judicial notice of its prior records in the above matters.

27 ² The court takes judicial notice of its records of the following orders issued by the Ninth Circuit to this court:
28 *Arpino v. Howell*, 3:13-cv-213-MMD-VPC (ECF No. 56); *Arpino v. Sandoval, et al.*, 3:14-cv-00409-MMD-WGC
(ECF No. 14); *Arpino v. Sandoval*, 3:14-cv-00481-MMD-WGC (ECF No. 29). In all three orders, the Ninth Circuit
court found plaintiff's appeal to be "frivolous" and denied plaintiff's application to proceed *in forma pauperis*. *See*
El-Shaddai v. Zamora, 833 F.3d 1036, 1046 (9th Cir. 2016) (ruling that dismissal of appeal on grounds of frivolity
not required where court has made express finding that appeal is frivolous).

1 is ordered that the Clerk of Court shall send plaintiff two copies of this order. Plaintiff shall make
2 the necessary arrangements to have one copy of this order attached to the check paying the filing
3 fee. It is further ordered that the Clerk of the Court shall retain the complaint (ECF No. 1-1).

4 **DATED:** February 16, 2018.

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6 **UNITED STATES MAGISTRATE JUDGE**